

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

FINAL STATEMENT OF REASONS

MODIFIED GUARANTEED ANNUITY REGULATIONS

**RH-05048001
October 23, 2006**

UPDATE OF INITIAL STATEMENT OF REASONS

1. Deletion of Citations to Authority. The proposed regulations have been amended since they were originally made available to the public pursuant to Government Code section 11346.5. The amendments delete citations to two statutes which the proposed regulations added as additional rulemaking authority. The Commissioner has determined that these citations are not necessary. The deletion of the two new authority citations changes the text of the regulations back to the authority citations currently in existence for each section of the regulations.

Specifically, the regulations have been amended to delete a comma, the word "and," and citations to Insurance Code sections "12921(a) and 12926" in the Notes which list authority and reference citations at the end of sections 2534.27 and 2534.28. The deletion of these amendments means that the authority cited for both section 2534.27 and 2534.28 will remain "Sections 10506(h) and 10506.3(a), Insurance Code."

Pursuant to 1 CCR section 100(a)(5), changing an authority or reference citation for a regulation is a change without regulatory effect. Therefore, deletion of the citations to Insurance Code sections 12921(a) and 12926 does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

No other changes have been made to the regulations since the regulations were originally made available to the public pursuant to Government Code section 11346.5.

2. Revision to the Description of the Specific Purpose and Reasonable Necessity for the Amendments to CCR section 2534.28(b)(10). The Initial Statement of Reasons describes the specific purpose and reasonable necessity for amendments to CCR section 2534.28(b)(10) as follows:

Existing CCR section 2534.28(b)(10) refers to the annual contract charge, the collection charge of \$1.25 per collection, the transaction charge of \$10, the single consideration contract charge of \$75, and adjustments based on the Consumer Price Index, the same items that are currently contained in CCR section 2534.28(b)(4) and which are being deleted as explained above. It makes no sense to delete the standards set forth in existing

CCR section 2534.28(b)(4) and replace them with the standard in the new CCR section 2534.28(b)(6) and yet retain the old standards of CCR section 2534.28(b)(10), which parallel the deleted provisions of CCR section 2534.28(b)(4). In order to remain consistent with the new CCR section 2534.28(b)(6) and the NAIC Model Regulation it is reasonably necessary to delete CCR section 2534.28(b)(10), for the same reasons CCR section 2534.28(b)(4) was deleted and replaced with CCR section 2534.28(b)(6).

The Commissioner hereby updates this passage of the Initial Statement of Reasons in order to more precisely describe the specific purpose and reasonable necessity for these changes:

Existing CCR section 2534.28(b)(10) adjusts (rather than refers to) the annual contract charge, the collection charge of \$1.25 per collection, the transaction charge of \$10, and the single consideration contract charge of \$75 based on the Consumer Price Index. The charges adjusted by CCR section 2534.28(b)(10) are the charges set forth in CCR section 2534.28(b)(4), which are being deleted as explained above. It makes no sense to delete the charges set forth in existing CCR section 2534.28(b)(4) and replace them with the provisions of the new CCR section 2534.28(b)(6) and yet retain the provisions of CCR section 2534.28(b)(10), which adjusts the charges in the deleted CCR section 2534.28(b)(4). In order to remain consistent with the new CCR section 2534.28(b)(6) and the NAIC Model Regulation it is reasonably necessary to delete CCR section 2534.28(b)(10), for the same reasons CCR section 2534.28(b)(4) was deleted and replaced with CCR section 2534.28(b)(6).

UPDATE OF MATERIAL RELIED UPON

No material other than the revised text of the proposed regulations, the transcript of the public hearing, the Updated Informative Digest, a Form 400 signed in October 2006, this Final Statement of Reasons, and a cover letter to OAL has been added to the rulemaking file since the time the rulemaking record was opened, and no additional material has been relied upon.

MANDATE UPON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Insurance has determined that the proposed regulations will not impose a mandate upon local agencies or school districts.

SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS

Since the date the rulemaking file on the proposed regulations was opened and the proposed regulations were made available to the public pursuant to Government Code section 11346.5, the Department of Insurance has not received any comments, objections, or recommendations regarding the proposed regulations from anyone, either during or after the public comment period. No members of the public appeared at the hearing on the proposed regulations to comment on the proposed regulations. (Please see the transcript of the hearing contained in the rulemaking record.)

ALTERNATIVES

The Commissioner has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected persons, than the adopted regulations. In support of this determination is the fact that no alternatives were suggested during the public comment period, despite the express invitation that was extended in the Notice of Proposed Action to comment on alternatives to the regulations.

IDENTIFICATION OF STUDIES

There are no technical, theoretical, and empirical studies, or similar documents relied upon in proposing the adoption of the regulations. The Commissioner has relied upon the NAIC's Modified Guaranteed Annuity Model Regulation #255 and the portion of the minutes of the NAIC's Joint Executive Committee\Plenary on March 5, 2006 that concerns revisions to the NAIC's Modified Guaranteed Annuity Model Regulation #255, which includes the Project History for the Model Regulation, in proposing adoption of the amendments to the existing regulations. The Commissioner has also relied upon NAIC Standard Nonforfeiture Law for Individual Deferred Annuities Model #805, and California's Standard Nonforfeiture Law for Individual Deferred Annuities, Insurance Code section 10168 et seq. Copies of these documents are in the rulemaking file.

REASONABLE ALTERNATIVES TO THE REGULATIONS; IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department of Insurance, that would carry out the purpose for which the regulations are proposed or which would lessen any adverse economic impact on small businesses. Indeed, the regulations are not anticipated to affect small businesses. The regulations affect insurance companies, which Government Code section 11342.610(b)(2) states are not small businesses. Although performance standards were considered as an alternative, they were rejected as ineffective in addressing the problem of updating the existing Modified Guaranteed Annuity regulations to conform them to revisions made in the NAIC's Modified Guaranteed Annuity Model Regulation #255.

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